



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R03-OAR-2018-0387; FRL-9996-72-Region 3]

Approval of the Redesignation Request for the Washington, DC-MD-VA 2008 8-Hour Ozone National Ambient Air Quality Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the request from the District of Columbia (the District) to redesignate to attainment their respective portion of the Washington, DC-MD-VA nonattainment area (hereafter “the Washington Area” or “the Area”) for the 2008 8-hour ozone national ambient air quality standard (NAAQS or standard) (also referred to as the “2008 ozone NAAQS”) as the District’s portion of the Area meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is therefore redesignating the District of Columbia to attainment for the 2008 ozone NAAQS in accordance with the CAA.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0387. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not

placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2043. Ms. Calcinore can also be reached via electronic mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington Area was designated as marginal nonattainment for the 2008 ozone NAAQS. At the time of its designation, the Washington Area consisted of the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George’s in Maryland, the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia, and the District of Columbia. *See* 40 CFR 81.309, 81.321, and 81.347.¹

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the

¹ On April 15, 2019 (84 FR 15108), EPA approved Maryland and Virginia’s requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to attainment of the 2008 ozone NAAQS.

area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the State containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.²

On March 12, 2018, February 5, 2018, and January 3, 2018, the District, Maryland, and Virginia, respectively, formally submitted requests to redesignate their portions of the Washington Area from marginal nonattainment to attainment for the 2008 ozone NAAQS. Concurrently, the District, Maryland, and Virginia formally submitted, as revisions to their respective SIPs, a joint maintenance plan for the Washington Area prepared by the Metropolitan Washington Council of Governments (MWWOG) that demonstrates maintenance of the 2008 ozone NAAQS through 2030 in the Washington Area. On April 15, 2019, EPA approved, as revisions to the District's, Maryland's, and Virginia's SIPs, the joint maintenance plan for the Washington Area. 84 FR 15108. In the April 15, 2019 action, EPA also approved Maryland and Virginia's requests to redesignate to attainment their portions of the Washington Area from marginal nonattainment to

² The following EPA guidance documents are included in the docket for this rulemaking available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2018-0387: "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni memorandum") and "State Implementation Plan (SIP) requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 (the "Shapiro memorandum").

attainment of the 2008 ozone NAAQS.³ At the time, EPA did not approve the District's request to redesignate to attainment their portion of the Washington Area for the 2008 ozone NAAQS.

On May 21, 2019 (84 FR 22996), EPA published a notice of proposed rulemaking (NPRM) for the District. In the NPRM, EPA proposed approval of the District's request to redesignate to attainment their portion of the Washington Area, pursuant to CAA section 107(d)(3).

II. Summary of SIP Revision and EPA Analysis

EPA reviewed the District's redesignation request and found in the May 21, 2019 NPRM that the District's portion of the Washington Area has satisfied the CAA section 107(d)(3)(E) requirements for redesignation for the 2008 ozone NAAQS. EPA's rationale for this action can be found in the May 21, 2019 NPRM. EPA received one adverse comment regarding the proposal, and, as discussed below, we conclude that the air quality monitoring data supports a finding that the Washington area is attaining the 2008 ozone NAAQS based on the 2015-2017 design value, and that preliminary data from 2016-2018 further supports that conclusion. Therefore, EPA is redesignating the District's portion of the Washington Area to attainment for the 2008 ozone NAAQS.

III. Public Comments and EPA Response

EPA received one comment on the May 21, 2019 NPRM. The comment and EPA's response are discussed below. The comment is included in the docket for this action, available online at www.regulations.gov, Docket ID: EPA-R03-OAR-2018-0387.

³ EPA's April 15, 2019 action redesignated the following jurisdictions in Maryland and Virginia to attainment for the 2008 ozone NAAQS: the Counties of Calvert, Charles, Frederick, Montgomery, and Prince George's in Maryland as well as the Counties of Arlington, Fairfax, Loudoun, and Prince William and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.

Comment: On June 20, 2019, EPA received an anonymous comment on the May 21, 2019 NPRM. The commenter stated that EPA should not redesignate the Washington Area because “this area has violated the ozone NAAQS for the 2008 year based on data from the Metropolitan Washington Council of Governments website”.⁴ The commenter stated that based on this data, the 2008 ozone NAAQS was violated five times in 2018 in Washington, DC. The commenter notes that although this data is preliminary, EPA should have access to data that is “quality assured and reviewed that is not yet final.” The commenter requests that EPA review the air quality data for 2018 and ensure the “air quality is clean for the 2008 standard based on the most recent available air quality data including the 2018 year.”

EPA Response: The commenter misunderstands the 2018 air quality monitoring data cited in their comment, and how to interpret that data in the context of whether an area is attaining the 2008 ozone NAAQS. As discussed in the May 21, 2019 NPRM, on November 14, 2017 (82 FR 52651), EPA determined that the entire Washington Area attained the 2008 NAAQS by the July 20, 2016 attainment date. EPA has also reviewed the most recent ambient air quality monitoring data for ozone in the Washington Area and finds that the Washington Area continues to attain the 2018 ozone NAAQS. The data cited by the commenter does not demonstrate a violation of the 2008 NAAQS. Therefore, as explained below, EPA correctly concluded in the May 21, 2019 NPRM that the District satisfies the CAA section 107(d)(3)(E)(i) requirement for redesignation to attainment under the 2008 ozone NAAQS, and the data cited by the commenter does not change that conclusion.

The air quality data cited by the commenter indicates the daily maximum 8-hour concentrations

⁴ The commenter included the following link in their comment, which provides daily air quality data for the Washington Area: <https://www.mwcog.org/environment/planning-areas/air-quality/air-quality-data/>.

of ozone recorded at air quality monitors located in the Washington Area. Compliance with the 2008 ozone NAAQS is not determined by whether an area's daily maximum concentrations exceed the level of the NAAQS, but rather is determined by whether an area's "design value" statistic meets the NAAQS. For the 2008 ozone NAAQS, the design value for an air quality monitor is determined by calculating the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations recorded at that monitor. See 40 CFR 50.15(b). An area's design value is based on the monitor in the area which records the highest design value over the three-year period. As discussed in the May 21, 2019 NPRM, an area "attains" the 2008 ozone NAAQS if the area's design value is below 0.075 ppm. The final 2015-2017 design values and preliminary 2016-2018 design values, included in Table 1 of the May 21, 2019 NPRM, are below the 2008 ozone NAAQS. See 84 FR 22998. As can be seen in Table 1 of the May 21, 2019 NPRM, the highest 2015-2017 design value in the Washington Area is 0.071 ppm and the highest preliminary 2016-2018 design value in the Washington Area is 0.072 ppm, both of which are below the 2008 ozone NAAQS. The data cited by the commenter therefore do not show that the Washington Area has violated the 2008 ozone NAAQS, and we are finalizing the finding that the Washington area has satisfied the CAA section 107(d)(3)(E)(i) requirement for redesignation to attainment under the 2008 ozone NAAQS.

In response to the commenter's request that EPA consider air quality data for 2018, EPA did evaluate preliminary 2018 ambient air quality monitoring data for ozone in the Washington Area and included this data in the May 21, 2019 NPRM and the docket for the rulemaking action available online at <https://www.regulations.gov>, Docket ID: EPA-R03-OAR-2018-0387.

Therefore, EPA's determination that the Washington Area continues to attain the 2008 ozone NAAQS is based on the most recent ambient air quality data for ozone in the Washington Area,

including preliminary 2016-2018 design values.

IV. Final Action

EPA is approving the District of Columbia's request to redesignate the District's portion of the Washington, DC-MD-VA area to attainment for the 2008 ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action redesignating to attainment the District's portion of the Washington Area for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 5, 2019.

Diana Esher,
Acting Regional Administrator,
Region III.

40 CFR part 81 is amended as follows:

PART 81 – DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. In § 81.309, the table “District of Columbia – 2008 8-Hour Ozone NAAQS [Primary and secondary]” is revised to read as follows:

§ 81.309 District of Columbia.

* * * * *

District of Columbia – 2008 8-Hour Ozone NAAQS
[Primary and Secondary]

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washington, DC-MD-VA: District of Columbia ¹	<u>[Insert date of publication in the Federal Register]</u>	Attainment		

¹ Excludes Indian country located in each area, unless otherwise noted.

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[FR Doc. 2019-15090 Filed: 7/15/2019 8:45 am; Publication Date: 7/16/2019]